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July 29, 1993

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

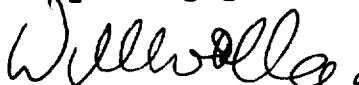
RE: MM Docket No. 93-106

Dear Mr. Caton:

Transmitted herewith for filing with the Commission in the above-referenced docket are an original and four copies of the "Reply Comments of Trans Video Communications, Inc. and The Trustees of Leland Stanford Junior University."

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,



William D. Wallace
(Member of Florida Bar only)

Enclosure

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programming. These comments were echoed by other ITFS licensees. See, e.g., Comments of University of Maryland, at 1 ("adoption of the proposal will contribute to the further degradation of the ITFS service and to the further erosion of the educational value of the ITFS channels"); Comments of Kern Ed. Telecom. Consortium, at ¶ 3 ("Channel loading could prevent the consortium from meeting the educational needs of the region").

Under the proposed rules, ITFS licensees would be allowed to hold four ITFS channels, only one of which would be used for instructional programming. However, to comply with the Commission's minimum instructional use requirements, ITFS licensees would be required to channel-load 80 hours of instructional programming on that one channel in the space of a week, 16 hours per weekday. As TVC, Stanford and other commenters noted, adoption of such rules would completely contravene the essential purpose of ITFS.

First, ITFS is intended to permit live, interactive programming through the use of the "talk-back" response frequencies associated with each ITFS channel. See, e.g., Wireless Cable Service (Second Report & Order), 6 FCC Rcd 6792, 6795 (1991) ("student-teacher dialogue is a critical aspect of any educational endeavor, and distance learning thus benefits greatly from two-way communication"), recon. denied, 7 FCC Rcd 5648 (1992). In a system using channel-loading, three channels and their corresponding response channels would not be used for ITFS programming at all, while the fourth would likely be used substantially for video recording outside school hours rather than

live programming for in-class instruction. The interactive, talk-back feature of ITFS would thus become virtually unused at facilities which channel-load.

Second, when the Commission allocated the 2.5 GHz spectrum for ITFS, it recognized that most licensees would require multiple channels to transmit several programs simultaneously. Educational Television, 39 FCC 846, 846 (1963), recon. denied, 39 FCC 873 (1964). As one commenter pointed out, "[m]ultiple channel, simultaneous ITFS transmission of instructional programming is essential to effectively and efficiently support the distribution of educational programming. . . ." Comments of University of Louisville, at ¶ 2. In a channel-loading regime, only one channel would be allotted for instructional programming. Despite the fact that most ITFS licensees as educational institutions schedule several courses for the same time slot, licensees which channel-load would be able to provide distance learning to only one class at a time.

Third, the primary purpose of ITFS is and always has been "to send visual and accompanying aural instructional material to selected receiving locations in accredited public and private schools, colleges and universities for the formal education of Students." Educational Television, 39 FCC at 852-53. This formal educational purpose would be very substantially impaired by channel-loading. Because most school days are no more than eight hours, an ITFS station employing channel-loading could only schedule live, interactive programming on 50% of a 16-hour broadcast day for one channel. Of course, three of the four

channels would be devoted to air commercial, entertainment programming. Thus, by allowing an ITFS licensee to channel-load, the Commission would allow that licensee to use only 50% of one of its four ITFS channels for any truly instructional purpose, or 12.5% of its total capacity.

Not only is channel-loading inconsistent with the purpose of ITFS, it also contravenes the typical educational day. As the Commission has itself recognized, most educational institutions operate on an 8 a.m. to 4 p.m. schedule. See Instructional Television Fixed Service, 101 FCC 2d 49, 86 (1985) (subsequent history omitted). For the Commission to adopt rules to permit channel-loading which are premised on the assumption that an educational institution can provide instructional programming on a 16-hour-a-day schedule "deliberately ignores a common sense understanding of what the needs of educational programming really are." Comments of Catholic Television Network, at 3. The instructional purpose of ITFS and the educational needs of ITFS eligibles are simply inconsistent with the channel-loading proposal, and, therefore, the proposed rules should be rejected.

II. THE PROPOSED RULES WOULD EFFECT A REALLOCATION OF THE ITFS SPECTRUM CONTRARY TO THE PUBLIC INTEREST.

Over the past several years, the Commission has gradually decreased its protection of the ITFS spectrum reservation through constant "tinkering" with the ITFS rules. See Joint Comments of ITFS Parties, at 3 n.1. By adopting channel-loading, the Commission would complete this gradual reallocation of the only

spectrum dedicated to instructional use in exchange for a commercial entertainment service.

Many commenters skirted the reallocation issue by asserting that channel-loading was the less costly equivalent of channel-mapping. See, e.g., Comments of Wireless Cable Ass'n Int'l, at 5-8; Joint Comments of ITFS Parties, at 5. However, as TVC and Stanford pointed out in their initial comments, unlike channel-loading, channel-mapping does not require the radical changes in the ITFS channel usage requirements proposed in the Notice, and therefore, the two are not functionally equivalent. See Comments of TVC and Stanford, at 13-14.

Moreover, de facto reallocation would be accomplished by subverting both the primary use of the frequencies and the class of users eligible for access to the spectrum. As discussed above, ITFS facilities which employ channel-loading would not be able to fulfill the instructional purpose which was the reason for the ITFS allocation, and the primary use of the channels would be converted to entertainment service.

Channel-loading also allows a new class of users to displace ITFS eligibles from the ITFS frequencies. The proposed channel-loading rules are premised on the ability of an ITFS licensee to fulfill its instructional programming needs on one channel of a licensed four-channel group. Despite the fact that the remaining three channels would not be used for educational purposes by such licensee, another ITFS eligible would not have access to them for instructional programming. Rather, channel-loading is designed to ensure that these unused ITFS frequencies are made available to an

MDS entity for the provision of commercial, entertainment programming.

Adoption of channel-loading rules would thus go beyond any of the Commission's previous methods to permit MDS use of ITFS frequencies. For example, leasing ITFS airtime is available for MDS entities. However, the Commission restricted leasing to excess capacity at times when the channels were not in use for instructional programming. See 47 C.F.R. § 74.931(e). Moreover, leasing excess capacity does not preclude the use of entire ITFS channels by ITFS eligible entities.

The Commission has also allowed MDS entities to apply for ITFS frequencies. See 47 C.F.R. § 74.990. However, these rules only apply to unused ITFS frequencies in communities where there are ITFS frequencies reserved to accommodate ITFS eligibles.

Unlike these prior proposals, channel-loading restricts ITFS service into an unreasonable configuration, and allows MDS programming to become the primary use of 75% of a licensed four-channel group. Despite this blatant modification in the permitted use of the spectrum, the Commission has made no public interest findings that warrant such a reallocation. The Commission's claim that channel-loading would "benefit and nurture ITFS operations" through ITFS-MDS partnerships is simply wrong. Notice, ¶ 17. The essential purpose of an MDS-ITFS partnership is to discourage the use of airtime for ITFS programming. Neither the Commission nor the commenters have pointed to any reason why encouraging conversion of ITFS spectrum for entertainment programming "benefits and nurtures" ITFS.

III. IF ADOPTED, CHANNEL-LOADING MUST BE STRICTLY CONTROLLED.

As discussed in the initial comments of Stanford and TVC and echoed in many other comments, if the Commission were to permit channel-loading despite its lack of public interest benefits, the Commission must strictly limit the manner in which channel-loading is implemented. See Comments of National ITFS Association; Joint Comments of ITFS Parties, 5-10. Although the Commission proposed the new rules as an "interim measure" (Notice, ¶ 17), the MDS commenters have shown their real interest -- in a securing or grabbing spectrum -- by seeking long-term access to ITFS channels through channel-loading. See, e.g., Comments of Rural Wireless Cable Group, at 3 (recommending use of channel-loading for ten years "following the arrival of digital technology"); Comments of Concerned Wireless Cable Operators, at 4-5 (recommending certification process to freely extend any sunset provision).

If the Commission adopts channel-loading rules, it must therefore include a sunset provision that will ensure the automatic demise of the rules and permit their extension only upon a clear showing that continuation of channel-loading would be in the public interest. As previously recommended by the National ITFS Association (Comments, at 5), any channel-loading rules should include a date-certain sunset provision within two years. Moreover, an ITFS licensee seeking to channel-load beyond the sunset date should be required to request a waiver of the programming requirements to do so.

In addition to a strict sunset provision, TVC and Stanford support many of the restrictions on channel-loading proposed by other commenters, including:

All ITFS program hours should be subject to recapture with no more than six months' notice. Each ITFS licensee must be able to use its licensed frequencies when its educational needs dictate. See Joint Comments of ITFS Parties, at 5-6.

ITFS applicants proposing substantial leased operations should be required to present a "heightened demonstration" of their educational intent and need, including specific evidence of current or future use of four channels for instructional purposes. See Joint Comments of ITFS Parties, at 6-7.

Furthermore, if channel-loading rules were adopted, TVC and Stanford emphasize that the following restrictions should apply:

- Licensees of four channels should be permitted to lease only one channel for 24-hour-a-day use by an MDS entity.
- An ITFS licensee proposing to lease a channel for 24 hours a day should be required to fulfill its ITFS programming requirements during the time period 8 a.m. through 4 p.m., Monday through Friday.
- An ITFS applicant proposing to use ITFS channels

on ITFS stations does not (a) interfere with existing primary ITFS operations or (b) preclude initiation of service from new ITFS stations which would otherwise be eligible for authorization.

The Commission must also reject the suggestion that the its rules be modified to allow not only channel-loading but also channel-spreading. See Joint Comments of Cross Country and the Box Springs Educators, at 6-7. Under this proposal, an ITFS licensee could satisfy its programming requirements on any channel of the consolidated channels used by a group of ITFS and MDS licensees participating in excess capacity lease agreements with the same wireless cable operator. Such a proposal could allow, for example, five ITFS licensees in a single community to use only one of up to 33 consolidated channels to satisfy their ITFS programming requirements; that is, an ITFS facility could possibly use none of its own licensed channels for instructional programming. This proposal demonstrates the risk and dangers inherent in the Commission's proposed rules and the absurdity of maintaining that channel-loading would not result in a reallocation of the ITFS spectrum. It must be rejected.

IV. CONCLUSION

The Commission's proposed channel-loading rules are inconsistent with the purpose of ITFS and contrary to the public interest. They would effect a de facto reallocation of frequencies reserved for instructional programming to a commercial, entertainment service. For the reasons outlined above

and in the initial comments of TVC and Stanford, these proposed rules should be rejected.

TRANS VIDEO COMMUNICATIONS, INC.
THE TRUSTEES OF LELAND STANFORD
JUNIOR UNIVERSITY

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Dated: July 29, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July 1993, I have caused to be served a copy of the foregoing Reply Comments of Trans Video Communications, Inc. and The Trustees of Leland Stanford Junior University by hand delivery (indicated with *) or by U.S. first-class mail, postage pre-paid, on the following:

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